

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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December 16, 2010

Legend:

X =

A =

D1 =

D2 =

Dear :

This responds to the letter dated June 16, 2010 and subsequent correspondence, submitted on behalf of X, requesting relief under § 1362(b)(5) of the Internal Revenue Code.

Facts

X was formed on D1. A is the sole shareholder of X. A intended that X be treated as an S corporation for federal tax purposes effective on D2, but the election to be treated as an S corporation was not timely filed. Accordingly, X requests a ruling that it will be treated as an S corporation effective D2.

Law and Analysis

Section 1362(a) provides that a small business corporation may elect to be an S corporation.

Section 1362(b) provides the rule on when an S election will be effective. Section 1362(b)(1) provides in relevant part that if an S election is made within the first two and one-half months of a corporation's taxable year, then the corporation will be

treated as an S corporation for the year in which the election is made. Under § 1362(b)(3), however, if an S election is made after the first two and one-half months of a corporation's taxable year, then that corporation will not be treated as an S corporation until the taxable year after the year in which the S election is filed.

Section 1362(b)(5) provides that if (1) no § 1362(a) election is made for any taxable year and (2) the Secretary determines that there was reasonable cause for the failure to timely make such election, then the Secretary may treat such an election as timely made for such taxable year and § 1362(b)(3) shall not apply.

X did not timely file an election to be treated as an S corporation under § 1362(a). X has, however, established reasonable cause for not making a timely S election and is entitled to relief under § 1362(b)(5).

Conclusion

Based solely on the facts submitted and the representations made, and provided that X otherwise qualifies as an S corporation, we conclude that X will be treated as an S corporation effective D2 if within 120 days from the date of this letter, X submits a properly completed Form 2553, with a copy of this letter attached, to the appropriate service center.

This ruling is conditioned on X and A filing, within 120 days following the date of this letter, federal income tax returns to report consistent with X being an S corporation for all taxable years following D2. Accordingly, A, in determining A's respective income tax liabilities, must include A's pro rata share of separately and nonseparately computed items of X under § 1366, make any adjustments to stock basis under § 1367, and take into account any distributions made by X under § 1368. If X or A fail to treat X as described above, this letter ruling will be null and void. A copy of this letter should be attached to each of the returns described above.

Except as specifically set forth above, no opinion is expressed or implied as to the federal tax consequences of the facts described above under any other provision of the Code. Specifically, no opinion is expressed concerning whether X is, in fact, an S corporation for federal tax purposes.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Pursuant to the power of attorney on file with this office, a copy of this letter will be sent to X's authorized representative.

Sincerely,

Cornelia J. Schnyder

Cornelia J. Schnyder
Senior Technician Reviewer, Branch 1
(Passthroughs & Special Industries)

Enclosures:

Copy of this letter

Copy for § 6110 purposes

cc: